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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,886	01/07/2004	Spero Payton	P298.101.101	8164
25281	7590	11/20/2006	EXAMINER	
DICKE, BILLIG & CZAJA, P.L.L.C. FIFTH STREET TOWERS 100 SOUTH FIFTH STREET, SUITE 2250 MINNEAPOLIS, MN 55402			MCGOWAN, JAMIE LOUISE	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/753,886	<b>Applicant(s)</b> PAYTON, SPERO	
	<b>Examiner</b> Jamie L. McGowan	<b>Art Unit</b> 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2,3,5-15,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3,5-15,17 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01/07/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/07/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-3, 5-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown 1,514,076 in view of Williamson 4,947,562, Rank 5,117,530 and Fulton US2001/0045029A1.

Brown discloses a method of pushing snow, including a snowplowing device having:

- a rigid blade (1) with a flat front face (3)
- a coupling device including:
  - o a metal faceplate (10) bolted to the blade and having a longest dimension not more than one-quarter the length of the blade (Fig. 2)
  - o a metal sleeve (8) attached to the face plate and having a terminal end extending angularly relative to the face plate (Fig. 4).
- a handle (14) mounted in the sleeve

The extension of the handle relative to a vertical plane of the blade defines an acute push angle (Fig. 4). The device is used to push snow by applying force to the handle. However, Brown does not disclose what material the blade is made from, how the sleeve is attached to the faceplate or the length of the blade.

Like Brown, Williamson discloses a device for pushing snow. Unlike Brown, Williamson teaches that wood is one of the materials the blade can be made from (Column 3, lines 5-6).

Like Brown, Rank discloses a sleeve 62 attached to a faceplate (44). Unlike Brown, Rank teaches welding the sleeve to the faceplate to impart further stability (Column 5, lines 52-55).

Like Brown, Fulton discloses a device for pushing snow including a blade (10) attached to a coupling device (11). Unlike Brown, Fulton teaches that the blade can be between 24-48 inches.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the snowplowing device of Brown from wood as in Williamson as one known available material, to weld the sleeve to the faceplate in Brown as taught in Rank as providing extra stability, and to make the blade at least 36 inches at in Fulton in order to increase efficiency.

Regarding claims 2- 3 and 9, the faceplate defines a generally planar front face with matches a generally planar back face of the blade (Fig. 4) with the metal sleeve extending linearly at an acute push angle (Fig. 4).

Regarding claims 6 and 8, the faceplate has a length not more than one-sixth the length of the wooden blade in the combination. There is nothing else on the back of the blade.

Regarding claim 10, making the faceplate and the sleeve from stainless steel is an obvious design choice since it is well known that stainless steel is corrosion resistant while still being strong.

Regarding claims 7, 11, 12, the exact dimension of the faceplate would be an obvious of the blade.

Regarding claim 13, making the wood pine is an obvious design choice.

Regarding claim 14, providing the distal end of the handle with a metal jacket is an obvious design choice that is well known to increase the strength of the connection.

Regarding claim 15, the distal section of the handle is mounted within the sleeve by screws (15), which are equivalent to bolts.

3. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown 1,514,076 in view of Williamson 4,947,562, Rank 5,117,530 and Fulton US2001/0045029A1 above and further in view of Hainer 5,779,293.

The combination above discloses the claimed method except for the steps of reversing the blade.

Like the combination, Hainer discloses a method of moving snow. Unlike the combination Hainer, discloses unbolting a face plate and turning the blade 180 degrees and rebolting the faceplate. Hainer teaches that this provides an additional edge on the blade.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the steps of rotating the blade 180 degrees as taught in Hainer increasing the time the blade can be used.

4. Claims 2, 3, 5-15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over 5,605,415 to Shamblin in view of 4,449,845 to Carrillo and 5,117,530 to Rank.

Regarding claim 17, Shamblin discloses a method of pushing material including a device comprising:

- A rigid wooden blade having a length not less than 36 inches (column 3 lines 1-3)
- A flat front face (Fig 1)
- A coupling device comprising:
  - A faceplate immovably nailed to the wooden blade (nailing is an equivalent of bolting) (column 3 lines 45-47)
  - The faceplate having a longest dimension not more than one-quarter the length of the blade (Fig 1)

- A sleeve immovably attached to the faceplate, the sleeve having a terminal end extending angularly relative to the faceplate (Fig 1)
- A handle (24 or 26) including:
  - A distal section mounted within the sleeve of the coupling device (Fig 1)
  - The handle mounted such that extension of the handle relative to a vertical plane of the blade defines an acute push angle (Fig 1)
- The flat front face of the wooden blade is capable of contacting a mass of material while a bottom side of the wooden blade contacts the surface below the material

While Shamblin discloses the invention as described above, it fails to disclose that the faceplate could be made of metal.

Like Shamblin, Carrillo also discloses a method and device capable of pushing a material. Unlike Shamblin, however, Carrillo discloses that the faceplate that attaches the handle portion to the blade portion can be made of metal. Carrillo teaches that metal is an important characteristic of the faceplate for durability and corrosion resistance (Carrillo - column 3 lines 33-40).

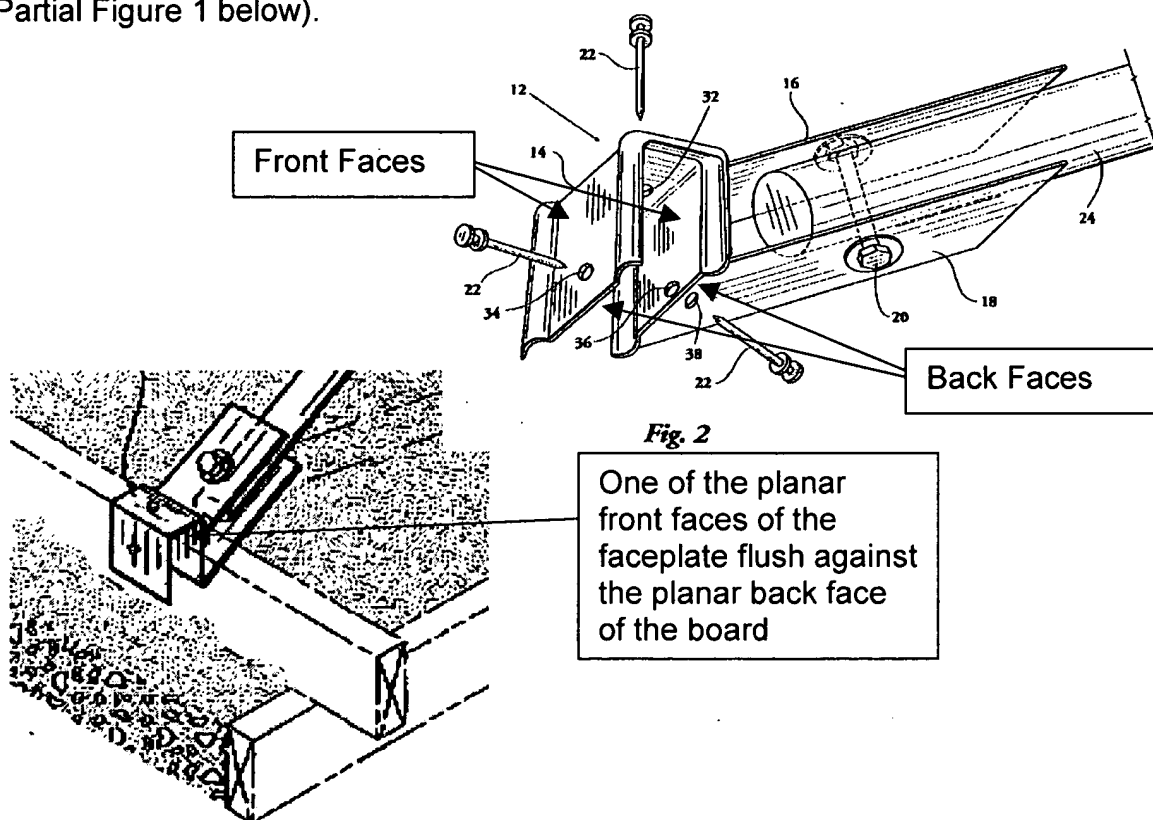
Given the teaching of Carrillo it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a metal faceplate in Shamblin as is presented in Carrillo to ensure that the faceplate can stand up to the strenuous environment in which it operates.

Also, while Shamblin discloses the invention as described above, it does not disclose that the metal sleeve is welded to the faceplate or that the material being moved is snow.

Like Shamblin, Rank discloses a sleeve 62 attached to a faceplate (44). Unlike Shamblin, Rank teaches welding the sleeve to the faceplate to impart further stability (Column 5, lines 52-55). Also, Rank discloses that any variation of material could be moved with his apparatus.

Given the teaching of Rank, it would have been obvious to one of ordinary skill in the art at the time the invention was made to weld the sleeve to the faceplate in Shamblin as taught in Rank as providing extra stability and it would be an obvious variation for the use of the screed board of Shamblin to move snow instead of concrete as taught by Rank as it is capable of moving unwanted material away from a surface.

Regarding claim 2, Shamblin discloses that the device further includes the metal faceplate defining a generally planar front face and the wooden blade defining a generally planar back face, and further wherein the two faces are flush (See Figure 2 and Partial Figure 1 below).



Regarding claim 3, the combination of Shamblin and Carrillo discloses that the device includes a handle extending from the terminal end of the metal sleeve to define the acute push angle (Carrillo - column 3 lines 33-40) (Shamblin Figure 1).

Regarding claim 5, Shamblin discloses that the device further includes a faceplate being generally rectangular in shape (Fig 1).

Regarding claim 6, Shamblin discloses that the faceplate has a length not more than one-sixth the length of the wooden blade (Fig 1).

Regarding claim 7, the dimension of the faceplate would be an obvious design choice for the invention.

Regarding claim 8, Shamblin discloses that the device is characterized by an absence of components contacting a back face of the wooden blade beyond a length of the face plate (Fig 1).

Regarding claim 9, Shamblin discloses that the metal sleeve extends linearly from the metal faceplate (Fig 1).

Regarding claim 10, the combination of Shamblin and Carrillo discloses that the faceplate and the sleeve are made of corrosion resistant steel (a.k.a. stainless steel) (Carrillo, column 3 lines 37-40).

Regarding claims 11 and 12, although Shamblin discloses the wooden blade to be a 2X4 (which has dimensions of 1.5 inches by 3.5 inches) he also discloses that other sizes can be used (column 3 lines 7-9). Therefore, it would be obvious to use a 2X6, which has dimensions of 1.5 inches by a height of 5.5 inches. Also, a 2X6 could be provided in various lengths, 48 inches being an obvious design choice based upon the needs of the user depending on the area to be cleared.

Regarding claim 13, making the wood pine is an obvious design choice.



Regarding claim 14, providing the distal end of the handle with a metal jacket is an obvious design choice that is well known to increase the strength of the connection.

Regarding claim 15, Shamblin discloses that the distal section of the handle is mounted within the sleeve with a bolting means (column 3 lines 24-29).

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over 5,605,415 to Shamblin in view of 4,449,845 to Carrillo and 5,117,530 to Rank as applied to Claim 17 above, and in further view of 5,779,293 to Hainer.

The combination above discloses the claimed method except for the steps of reversing the blade.

Like the combination, Hainer discloses a method of moving a material. Unlike the combination Hainer, discloses unbolting a face plate and turning the blade 180 degrees and rebolting the faceplate. Hainer teaches that this provides an additional edge on the blade.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the steps of rotating the blade 180 degrees as taught in Hainer increasing the time the blade can be used.

### ***Response to Arguments***

6. Applicant's arguments filed August 18, 2006 have been fully considered but they are not persuasive.

Regarding the amendment of claim 17, Brown specifically teaches that at least a portion of the face is in fact flat. The claims do not require that the entire front face be flat. If Applicant would like to argue or amend that the entire blade must be flat, they

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should refer to the second rejection of Claim 17 as set forth in Paragraph 4 of this Office Action.

Regarding claim 17, the applicant argues that it would be difficult if not impossible to form the blade of Brown out of wood. Wood is commonly provided with some degree of curvature to perform various functions. Wooden bowls and wooden buckets, for example, both contain curvature and yet it is not impossible to form them.

Regarding claim 2, the applicant argues that the blade of Brown does not contain generally planar faces. As the back face of the board and the front face of the faceplate are only slightly curved, they do define a *generally* planar face.

Regarding claim 5, the applicant argues that the blade of Brown does not define a generally rectangular face. Referring to Figure 3, however, assuming Figure 4 did not cover a portion of Figure 3, the faceplate of Brown has a generally rectangular shape when viewed from behind as in Figure 3.

Regarding claim 12, the applicant argues that the dimensions of 48" long by 5.5" tall is not an obvious design choice. In the applicant's specification, however, the use of these dimensions is described but it is also conceded that various other lengths and heights of the plow board could be used. Therefore the exact dimensions of the plow board are in fact matters of design choice, based on the users needs depending on the area to be cleared or the level of snow fall.

Regarding claim 13, the applicant argues that a pine wood board is not an obvious design choice because conventional plow boards are made of metal. However, as seen in Williamson, wood is a known material that can be used for a plow board. It would be obvious that many types of wood, pine included, could be used for the board as pine is a readily available and well known material and is a commonly used material for wood products.

Regarding claim 18, the applicant argues that the blade of Brown could not be flipped 180° because element 5 would not perform the same function as element 3 when flipped. Brown does not say that the angle of element 5 will not produce an appropriate wedging action, he simply states that the angle at which element 3 is placed ensures that the wedging action will continue throughout the life of the blade. The blade of Brown could still be turned 180°, element 5 would just not necessarily perform a wedging function as it wears down over time.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamie L. McGowan whose telephone number is (571)272-5064. The examiner can normally be reached on Monday through Friday 8:00 AM to 5:00 PM EST.

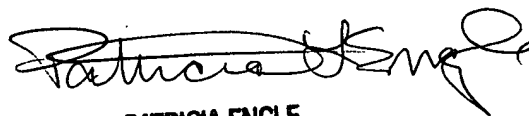
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571)272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jamie L. McGowan  
November 7, 2006

**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Art Unit 3671**

A handwritten signature in black ink, appearing to read 'Patricia Engle', with a stylized flourish at the end.

**PATRICIA ENGLE**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3600**